

Official

RECEIVED  
8-2-02

TL

In contrast, the Hollenberg reference teaches the inverse of this. The mobile terminal defines an area thereabout. If the area surrounding the mobile terminal overlaps a point of presence, content is provided to the mobile terminal. The Examiner, in the telephone conversation with Applicant's attorney, indicated that to him these two concepts were the same thing. Applicant respectfully traverses this assertion. The Patent Office is entitled to give broad reasonable interpretations to claim elements. MPEP § 2111.01. However, reasonable is still part of the standard. Under no reasonable construction is 1) defining an area around a point and sending content to a mobile terminal if it comes into the area the same as 2) defining an area around a mobile terminal and providing content to the mobile terminal if a point comes within the area. As noted above, the distinction is perhaps subtle, but it is a distinction and it affects how the elements operate and interact. Thus, it is not a superficial distinction.

Turning now to the claims, claim 1 recites "determining a location of the mobile terminal; determining a locality (a defined area associated with a point of presence) encompassing the location of the mobile terminal. . . ." This clearly claims the area around the point of presence and provision of content to the mobile terminal if the mobile terminal comes within the locality. The Patent Office asserts that col. 5, lines 19-28 or col. 8, lines 65-68 teaches this element of determining if the mobile terminal is within the locality. The col. 5 passage indicates that the mobile terminal has a GPS receiver; it does not say anything about determining if the mobile terminal is within a defined area associated with a point of presence. The col. 8 passage likewise indicates that the mobile terminal has a GPS system, but again, there is nothing that indicates that anything determines if the mobile terminal is within a defined area associated with a point of presence. During the conversation with the Examiner, the Examiner indicated that he felt these were the same things. Applicant disagrees and requests reconsideration of the interpretation of the claim on the grounds that determining these elements to be equivalent is an unreasonable interpretation of the claim element and is not supported by any suggestion within the reference.

Further, since no defined area associated with a point of presence exists within the reference, there is no "accessing content based on the locality. . . ." The Patent Office points to col. 7, lines 31-37 or col. 9, lines 11-14 for support. The first passage indicates that a point of presence (a store) may send content to the mobile terminal. However, there is still not a teaching that a defined area associated with a point of presence is ever defined or that mere entry into the

defined area associated with a point of presence causes the provision of content for the points of presence within the defined area. The second passage relates to a situation information system which provides local or proximate information to the mobile terminal, but again, there is no teaching or suggestion of defining a locality and providing content based on the locality.

In each instance, the Hollenberg reference teaches that the mobile terminal exudes a radius of acceptance, and if the point of presence comes within that radius, content is provided. Applicant, as has been stated repeatedly, claims (in claim 1) the inverse – namely, the points of presence exude a radius (or other area) and if the mobile terminal comes within that radius, the mobile terminal receives content. These are not the same thing, and the claim language clearly defines over the teachings and suggestions of the reference.

Claims 2-11 depend from allowable claim 1 and are allowable for the same reasons.

Claim 12 is substantially identical to claim 1 except presented in apparatus form. The arguments presented above are equally applicable and are not repeated here. The Patent Office cites to the same passages in the reference, and these have already been addressed. Thus, claim 12 defines over the reference and is in a condition for allowance.

Claims 13-23 depend from allowable claim 12 and are allowable for the same reasons.

Claim 25 is similar to claim 1 and is allowable for the same reasons.

Claim 26 depends from allowable claim 25 and is allowable for the same reasons.

Claims 11 and 22 are still meritorious of special mention because they help highlight the differences between the claimed invention and the reference. Claims 11 and 22 recite two zones. One zone, the locality, surrounds the point of presence. The second zone, the “zone of acceptance,” surrounds the mobile terminal. This zone of acceptance is analogous to the radius that is emitted from Hollenberg’s mobile terminal. However, the claim does recite both zones, and a teaching of a single zone is insufficient to anticipate the claim. MPEP § 2131. Further, if any portion of these two zones overlap, the mobile terminal receives content about the points of presence within the locality. The Patent Office points to Fig. 14, steps 131, 127-130 for support. However, this only shows the single zone of acceptance and not the locality. Since both are claimed, the Patent Office has failed to anticipate the claim.

Applicant appreciates the present invention may be easy to misunderstand, but the present invention is, quite simply, different than the reference, and the difference is claimed. The Examiner’s position that the two disclosures are equivalent is not supported. Rather, they

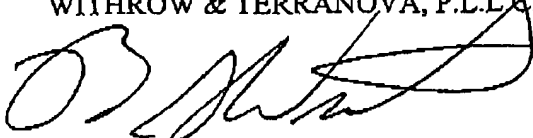
are inverses of one another. Applicant understands that this response and any Advisory Action that issues as a result of this response must be reviewed by the Examiner's supervisor. Applicant therefore requests that the supervisor telephone the undersigned to schedule a telephonic interview prior to the issuance of any Advisory Action so that the subtleties of the present invention may be discussed and Applicant afforded the opportunity to understand if the supervisor holds the same interpretation of the reference as the Examiner.

Applicant requests reconsideration and claim allowance at the Examiner's earliest convenience in light of the arguments presented herein.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Benjamin S. Withrow  
Registration No. 40,876  
P.O. Box 1287  
Cary, NC 27512  
Telephone: (919) 654-4520

Date: August 2, 2002  
Attorney Docket: 7000-075

<b>CERTIFICATE OF TRANSMISSION</b>	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Ly. Nghl</u>	Art Unit: <u>2682</u> Fax: <u>703-872-9315</u>
<u>Kelly Farrow</u> Name of Sender	
<u>[Signature]</u> Signature	
<u>8/2/02</u> Date of Transmission	